

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:
Forever 21, Inc.
2001 S. Alameda Street
Los Angeles, CA 90058

Respondent

Docket No. HWCA20081796

CONSENT ORDER

Health and Safety Code
Section 25187, 25214.13

INTRODUCTION

The California Department of Toxic Substances Control (Department) and Forever 21, Inc. (Forever 21) (Respondent) enter into this Consent Order and agree as follows:

1. Respondent is a "Supplier" of packages as defined in Health & Safety Code Section 25214.12(I).

2. Respondent offers for promotional purposes packages at various locations throughout California.

3. The Department obtained Forever 21 plastic shopping bags with the Forever 21 logo on them from various Forever 21 retail locations throughout California. The Department began obtaining such Forever 21 shopping bags in January, 2006 and continued periodically to obtain and test Forever 21 bags for compliance with the Toxics in Packaging Prevention Act (Health & Safety Code Sections 24214.11 through 25214.21.) through April, 2008.

1 4. The Department alleges the following violations:

2 Commencing in January, 2006, Respondent offered for promotional purposes
3 packages at various retail locations throughout California on various occasions in
4 violation of Health and Safety Code Section 25214.13, subdivision (c). Respondent
5 violated Health and Safety Code Section 25214.13, subdivision (c), by offering for
6 promotional purposes packages that included a regulated metal or regulated metals, as
7 defined in Health & Safety Code Section 25214.12, subdivision (k), in excess of 100
8 parts per million.
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11 5. A dispute exists regarding the alleged violations.

12 6. The parties wish to avoid the expense of litigation and to ensure prompt
13 compliance.

14 7. Jurisdiction exists pursuant to Health and Safety Code sections 25187 and
15 25214.21. Health and Safety Code section 25187 authorizes the Department to order
16 action necessary to correct violations and to assess a penalty when the Department
17 determines that any person has violated specified provisions of the Health and Safety
18 Code or any permit, rule, regulation, standard, or requirements issued or adopted
19 pursuant thereto.
20

21 8. Respondent waives any right to a hearing in this matter.

22 9. This Consent Order shall constitute full settlement of the violations alleged
23 above, but does not limit the Department from taking appropriate enforcement action
24 concerning other violations not within the scope of this Consent Order.
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26 10. Respondent does not admit the violations alleged above, except as follows:
27 Respondent admits the facts alleged above for the purposes of any subsequent action
28

1 brought pursuant to the Hazardous Waste Control Law, Health and Safety Code section
2 25100 et seq., on or before January 1, 2011..

3 SCHEDULE FOR COMPLIANCE

4
5 11. Respondent shall comply with the following:

6 11.1. Respondent shall cease providing to members of the public packages that
7 do not comply with the Toxics in Packaging Prevention Act. Further, Respondent shall
8 remove from circulation and properly handle any packages in its possession or in the
9 possession of any of its distributors, franchisees, or retail outlets that do not comply with
10 the Toxics in Packaging Prevention Act.
11

12 11.2. Submittals: All submittals from Respondent pursuant to this Consent
13 Order shall be sent simultaneously to:

14 Michael Berriesford
15 Supervising Criminal Investigator
16 Department of Toxic Substances Control
17 1001 I Street, 23rd Floor
18 P.O. Box 806
19 Sacramento, California 95812-0806
20

21 Erika Giorgi
22 Staff Counsel
23 Office of Legal Counsel
24 Department of Toxic Substances Control
25 1001 I Street, 23rd Floor
26 P. O. Box 806
27 Sacramento, California 95812-0806
28

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2 11.3. Communications: All approvals and decisions of the Department made
3 regarding such submittals and notifications shall be communicated to Respondent in
4 writing by a member of the Office of Criminal Investigations or the Office of Legal
5 Counsel. No informal advice, guidance, suggestions, or comments by the Department
6 regarding reports, plans, specifications, schedules, or any other writings by Respondent
7 shall be construed to relieve Respondent of its obligation to obtain such formal
8 approvals as may be required.
9

10 11.4. Department Review and Approval: If the Department determines that any
11 report, plan, schedule, or other document submitted for approval pursuant to this
12 Consent Order fails to comply with the Order or fails to protect public health or safety or
13 the environment, the Department may return the document to Respondent with
14 recommended changes and a date by which Respondent must submit to the
15 Department a revised document incorporating the recommended changes.
16
17

18 11.5. Compliance with Applicable Laws: Respondent shall carry out this Order
19 in compliance with all local, State, and federal requirements.
20

21 11.6. Endangerment during Implementation: In the event that the Department
22 determines that any circumstances or activity (whether or not pursued in compliance
23 with this Consent Order) are creating an imminent or substantial endangerment to the
24 health or welfare of people on the site or in the surrounding area or to the environment,
25 the Department may order Respondent to stop further implementation for such period of
26 time as needed to abate the endangerment. Any deadline in this Consent Order directly
27 affected by a Stop Work Order under this section shall be extended for the term of such
28 Stop Work Order.

1 11.7. Liability: Nothing in this Consent Order shall constitute or be construed as
2 a satisfaction or release from liability for any conditions or claims arising as a result of
3 past, current, or future operations of Respondent, except as provided in this Consent
4 Order. Notwithstanding compliance with the terms of this Consent Order, Respondent
5 may be required to take further actions as are necessary to protect public health or
6 welfare or the environment.
7

8 11.8. Site Access: Access to the warehouse(s), distribution centers, retail
9 establishments or other places where Respondent stores, transports or keeps packages
10 for distribution to the public shall be provided at all reasonable times to employees,
11 contractors, and consultants of the Department, and any agency having jurisdiction.
12 Nothing in this Consent Order is intended to limit in any way the right of entry or
13 inspection that any agency may otherwise have by operation of any law. The
14 Department and its authorized representatives may enter and move freely about all
15 areas in which Respondent stores, transports or keeps packages for distribution to the
16 public at all reasonable times for purposes including but not limited to: inspecting
17 records, and contracts relating to packages or packaging; reviewing the progress of
18 Respondent in carrying out the terms of this Consent Order; and conducting such tests
19 as the Department may deem necessary. Respondent shall permit such persons to
20 inspect and copy all records, documents, and other writings, including all sampling and
21 monitoring data, in any way pertaining to work undertaken pursuant to this Consent
22 Order.
23

24 11.9. Sampling, Data, and Document Availability: Respondent shall permit the
25 Department and its authorized representatives to inspect and copy all sampling, testing,
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1 monitoring, and other data generated by Respondent or on Respondent's behalf in any
2 way pertaining to work undertaken pursuant to this Consent Order. Respondent shall
3 allow the Department and its authorized representatives to take duplicates of any
4 samples collected by Respondent pursuant to this Consent Order. Respondent shall
5 maintain a central depository of the data, reports, and other documents prepared
6 pursuant to this Consent Order. All such data, reports, and other documents shall be
7 preserved by Respondent for a minimum of six years after the conclusion of all activities
8 under this Consent Order. If the Department requests that some or all of these
9 documents be preserved for a longer period of time, Respondent shall comply with that
10 request, deliver the documents to the Department, or permit the Department to copy the
11 documents prior to destruction. Respondent shall notify the Department in writing at
12 least six months prior to destroying any documents prepared pursuant to this Consent
13 Order.
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17 11.10. Government Liabilities: The State of California shall not be liable for
18 injuries or damages to persons or property resulting from acts or omissions by
19 Respondent or related parties specified in paragraph 13.3, in carrying out activities
20 pursuant to this Consent Order, nor shall the State of California be held as a party to
21 any contract entered into by Respondent or its agents in carrying out activities pursuant
22 to this Consent Order.
23

24 11.11. Incorporation of Plans and Reports: All plans, schedules, and reports
25 that require Department approval and are submitted by Respondent pursuant to this
26 Consent Order are incorporated in this Consent Order upon approval by the
27 Department.
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1 11.12. Extension Requests: If Respondent is unable to perform any activity or
2 submit any document within the time required under this Consent Order, the
3 Respondent may, prior to expiration of the time, request an extension of time in writing.
4 The extension request shall include a justification for the delay.
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6 11.13. Extension Approvals: If the Department determines that good cause
7 exists for an extension, it will grant the request and specify in writing a new compliance
8 schedule.
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10 PAYMENTS

11 12. Within 15 days of the effective date of this Consent Order, Respondent shall
12 pay the Department a total of \$115,000.00, of which \$80,000.00 is a penalty and
13 \$35,000.00 is reimbursement of the Department's costs. Respondent's check shall be
14 made payable to Department of Toxic Substances Control, and shall be delivered
15 together with the attached Payment Voucher to:
16

17 Department of Toxic Substances Control
18 Accounting Office
19 1001 I Street, 21st floor
20 P. O. Box 806
21 Sacramento, California 95812-0806
22

23 A photocopy of the check shall be sent:
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25 To: Michael Berriesford
26 Supervising Criminal Investigator
27 Department of Toxic Substances Control
28 1001 I Street, 23rd Floor
P.O. Box 806

1 Sacramento, California 95812-0806

2
3 To: Erika Giorgi
4 Office of Legal Counsel
5 Department of Toxic Substances Control
6 1001 I Street, 23rd floor
7 P. O. Box 806
8 Sacramento, California 95812-0806
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10 12.1 In addition to the penalties and costs specified above, Respondent shall
11 within 15 days of the effective date of this order make a payment to the "Toxics in
12 Packaging Clearinghouse" (TPCH) in the amount of \$50,000.00. Such payment shall
13 constitute a Supplemental Environmental Project (SEP). Payment of the SEP shall be
14 sent to:
15

16 Ms. Patty Dillon
17 Toxics In Packaging Clearinghouse
18 c/o Northeast Recycling Council, Inc.
19 139 Main Street, Suite 401
20 Brattleboro, Vermont 05301
21

22 TPCH shall have the discretion to spend the SEP money paid to it for any activity or
23 activities that is/are within the scope of its general purpose and mission. Acceptable
24 uses for the SEP money include, but are not limited to, any or all of the following:
25 recruitment activities to bring new states and other members into the TPCH; costs of
26 travel for TPCH staff or employees of member states to attend conferences, seminars,
27 trade shows and the like regarding toxics in packaging issues; costs of conducting the
28

1 semi-annual meetings of the TPCH; costs of travel for TPCH staff or employees of
2 member states to attend the semi-annual meetings of the TPCH; costs of procuring
3 equipment for testing items for compliance with toxics in packaging laws; costs of
4 running laboratory or other analysis of packaging and packaging components for
5 compliance with toxics in packaging laws; conducting education and outreach activities
6 regarding toxics in packaging issues including, but not limited to, the cost of mailers,
7 websites, and advertisements in whatever medium.
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10 12.2 If Respondent fails to make payment as provided above, Respondent
11 agrees to pay interest at the rate established pursuant to Health and Safety Code
12 section 25360.1 and to pay all costs incurred by the Department in pursuing collection
13 including attorney's fees.
14

15 OTHER PROVISIONS

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18 13.1. Additional Enforcement Actions: By agreeing to this Consent Order, the
19 Department does not waive the right to take further enforcement actions, except to the
20 extent provided in this Consent Order.

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22 13.2. Penalties for Noncompliance: Failure to comply with the terms of this
23 Consent Order may subject Respondent to civil penalties and/or punitive damages for
24 any costs incurred by the Department or other government agencies as a result of such
25 failure, as provided by Health and Safety Code section 25188 and other applicable
26 provisions of law.

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28 13.3. Parties Bound: This Consent Order shall apply to and be binding upon
Respondent and its officers, directors, agents, receivers, trustees, employees,

1 contractors, consultants, successors, and assignees, including but not limited to
2 individuals, partners, and subsidiary and parent corporations, and upon the Department
3 and any successor agency that may have responsibility for and jurisdiction over the
4 subject matter of this Consent Order.
5

6 13.4. Effective Date: The effective date of this Consent Order is the date it is
7 signed by the Department.

8 13.5. Integration: This agreement constitutes the entire agreement between the
9 parties and may not be amended, supplemented, or modified, except as provided in this
10 agreement.
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13 Dated: 13 August 2008

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15 Respondent **Do Won Chang**
Chief Executive Officer

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17 Dated: August 21, 2008

18 **Michael Berriesford**
19 **Supervising Criminal Investigator**
20 **Department of Toxic Substances Control**
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